

LAKE COUNTY BOARD of ADJUSTMENT
November 13, 2019
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen, Mike McKee

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Tiffani Murphy, Lita Fonda

Don Patterson called the meeting to order at 3:32 pm

HAGERTY CONDITIONAL USE—FINLEY POINT (3:32 pm)

Rob Edington mentioned agent/architect Nicholas Cole was here. He presented the staff report. (See attachments to minutes in the Nov. 2019 meeting file for staff report.) On pg. 5, item #20, Rob corrected the publication date from Oct. 31 to Oct. 24. He noted that comment was received from Fish, Wildlife & Parks, who stated they had no comment.

Rob specified for Steve that the buffer strip management plan talked about the lakeshore buffer as well [as the north/south buffer]. He referred to a visual on attachment 4. The majority of the existing vegetation was landscaped and no additional had been proposed. Per photos 1 and 5 in attachment 6, this was mostly grass. The majority of the shrubbery was located more along the boundaries, with a little in the center. A wall was between the gravel beach area and the lawn area. There was a hot tub as well. The building to the side of the slope with a patio roof would be taken out.

Nicholas mentioned that a landscape architect from Polson was working on the property. He confirmed with Steve that he would like to see more shrubs. Judging from conversations with the landscape architect, there would be shrubbery along the wall along the bottom. There would still be a lot of grass but there'd be another layer of shrubs for water to flow through.

Rob explained for Steve that building across lot lines was not permitted in zoning districts or subdivision approvals with setbacks by owners with 2 adjacent tracts of record. This was due to setbacks.

Agent Nicholas Cole offered to answer questions.

Public comment opened: None offered. *Public comment closed.*

Steve suggested modification:

Pg. 7, 6th line from the top, and also pg. 8, item vi: Change 'vegetative buffer' to 'effective vegetative buffer is developed as needed and'.

Steve and Mike talked about changing the 38% to 39%. Rob clarified for Frank that the upper limit of 49% mentioned near the end of item #9 could not be exceeded. If an agent came with a slight change, staff didn't object if it didn't exceed 49% but they also didn't want to leave it open-ended. If a change was significant they would want additional board review. These were

reasons they didn't suggest 49% as a blanket. Nicholas suggested 40%. The plans were far along and unlikely to change so 40% would be more than enough.

Steve, Mike and Frank, pg. 10, condition #2: Change '38%' in 1st line and 4th line to '40%'.

Mike returned to the vegetation plan and photo 1 of attachment 6. He estimated that high water would be at the end of the dock, by the first retaining wall. He thought that created a great drain area for excess stormwater without having to have so much concern over additional landscaping and vegetation. Steve said the vegetation could do a lot. On the shoreline, it could help with erosion. More importantly, with the runoff, those plants used nutrients out of the water so the nutrient-rich water didn't reach the lake and grow algae. The plants didn't necessarily need to be in the gravel. They could be in the lawn area. He described this further. Nicholas thought the landscape walls did a good job of slowing velocity and catching the water and inverting it down. Mike explained he wasn't opposed to that but didn't want to create additional burdens on landowners who wanted to improve their properties.

Mary asked about what appeared to be a cement patio that the dock came up to, with a retaining wall. She thought they'd want vegetation there to prevent water going from the patio directly into the lake. Nicholas said it was existing and probably 15 years old. He reported that the owner said it was permitted. Nicholas thought the rules had [changed].

Steve trusted the landscaper to know the best thing to do here. Communication with the landscaper to make sure they understood about the importance of a buffer was important. Plenty of information was available.

Steve, pg. 10, condition #4, 5th line: Change 'removed' to 'managed'.

Steve and Frank, last line: Add '; this includes developing and maintaining an acceptable vegetative buffer along the lakeshore' after 'property'.

Rob confirmed for Steve that condition #5 was in case if the boathouse needed removal.

**Motion made by Frank Mutch, and seconded by Mike McKee, to approve the conditional use, including the changes made in the conditions and terms and the findings of fact.
Motion carried, all in favor.**

LEWIS VARIANCE—UPPER WEST SHORE (4:00 pm)

Mike McKee recused himself from this item, given over 45 years of personal relationship with Gail Lewis. Steve disclosed that he'd also known the Lewis family for over 40 years. He didn't have a financial relationship or something that would be affected by his participation in this discussion. He did not recuse himself but wanted to disclose this.

Tiffani Murphy presented the staff report. (See attachments to minutes in the Nov. 2019 meeting file for staff report.) Frank recalled that a recused person left the room. Steve agreed that Wally had suggested this, so the recused person would not influence the other members.

Tiffani presented the staff report. (4:02 pm) (See attachments to minutes in the Nov. 2019 meeting file for staff report.)

Steve asked if the posts were located such that if the deck was cut back to them, the project would not require a variance. Tiffani said they measured to the edge of the decking, not to the posts. From the drip line of the deck to the edge of the pavement measured approximately 10 feet. Kipp Lewis said it was 17 feet depending where you marked on the road. Tiffani verified for Mary that the measurement was to the edge of the road rather than the middle in this case.

Kipp Lewis represented his dad, Gail Lewis, and spoke in favor of the variance. He outlined history of the property, including a court-ordered split and background on the cabins and house. Referring to item 6 on pg. 4, he had overlooked the decks and impervious surface, and apologized for that. He thought a 5-foot deck wouldn't be useable, and to remove the deck would look very odd. Regarding stormwater runoff, they'd never adjusted it in the last 40 years and nothing went into the lake. They felt it was taken care of. No public comments had been submitted. He was contacted by cousins and neighbors, who expressed support of the deck. In speaking with county attorney Wally Congdon, the issue was where that distance was. They wanted to have a 10-foot deck that was plus or minus 10 feet from the road. He'd measured the edge of the deck at 17 feet.

Regarding the last portion of item 9 on pg. 5, Kipp asked for a definition of 'damaged'. Jacob explained this would be the definition for 'destroyed' in the Upper West Shore zoning, as they were considering damaged to the point of destruction. He read the definition. The interpretation of what that meant was up to the zoning administrator. Kipp talked about encroachment on the road and showed pictures. (No copy was given for the minutes file.)

Public comment opened: None was offered. *Public comment closed.*

Steve asked if a 7-foot deck would work. Kipp said it was built to sit out there and enjoy the lake and questioned whether a table and chairs would fit in that space. He couldn't go with 7 feet because it was past his posts. Steve thought he'd said the posts were 20 feet from the pavement edge. Gail asked why they were asked to comply when others hadn't been. Steve suggested that was like asking why one person got stopped for speeding and not others. Gail said the road had a [prescriptive] easement rather than a right of way. It didn't say how many feet. Kipp offered to move the road. Gail said they'd do what the Slacks did and pound posts [to move the road]. Frank and Steve thought they were talking about 3 feet. Tiffani reiterated they'd measured the deck at 10 feet from the pavement. They didn't measure the posts. She thought it depended on where you measured from. Kipp mentioned the road varied. Frank explained that you measured from the closest part of the deck. Steve suggested measuring 20 feet back from the pavement in several places and connect those with a string to determine the edge of the setback, and see where the deck was with respect to that.

Frank pointed to the photo in attachment 5. It looked like plenty of space for the road to be used. He thought item A on pg. 7 contained a good argument for approval. He thought it was reasonable to approve it; a deck with a width less than 10 feet was just a walkway. In terms of being unique, the lot was an odd shape with steep slopes. Since they generally didn't want slope disturbance, he thought they could use that to justify this as well.

Steve said they needed to decide if they could still meet the intention of the law if they didn't meet the letter. The intention was to provide reasonable access for the community to use the road and to do road maintenance and so forth.

Gail and Kipp felt they had more access for the road than anyone else. Steve said it was hard to look at the other properties; they didn't know the history or if they had permits. Gail talked about projects that he'd protested here. He'd helped write the regulations. It was his fault that he hadn't understood a deck was part of the footprint of the structure. Tiffani clarified for Steve that an after the fact zoning conformance would be required. It had not yet been received. This was in the conditions and terms.

Don and Mary were in favor of approving this. Steve thought they needed findings to support approval. Changes to the findings were given.

Frank:

- Pg. 7, item A: Keep the last two sentences, and add 'have been built' to the end.
- Pg. 7, item B, 1st paragraph:
 - Replace the paragraph through 'at the time' in the 5th line with 'Although'.
 - Replace the wording after 'conflict with the setbacks,' with 'it would have increased disturbance to steeply sloped areas.'
- Pg. 7, item B, 2nd paragraph: Scratch this paragraph.
- Pg. 7, item B, 3rd paragraph:
 - Delete the first word 'Although'.
 - 2nd line: Add a period after 'through it'.

Steve:

- Pg. 7, item B, after 'through it.': Replace the rest of the paragraph with 'This creates a hardship that was out of the control of the applicant.'

Kipp noted they could set it back further based upon their septic permit from DEQ and running their tanks together to be able to pump up. They had a graywater line that came behind it.

Frank:

- Pg. 8, item C: Replace this paragraph with 'The unique shape, topography, existing roads and existing septic system are peculiar to the applicant's property.'

Steve noted that a cabin had existed previously in the spot where the house was now.

Frank and Steve:

- Pg. 8, item D: Replace this with 'The hardship results from property limits per item C above and the efforts to minimize adverse impacts to the property by utilizing historically established building sites not created by the applicant.'
- Pg. 8, item E: Replace this with 'The hardship is due to the topography, unique shape of the property, existing roads and septic system, and to use a historic building site to minimize impacts which are not economic.'

Stormwater was discussed, with the first bullet of item F on pg. 8. Steve suggested they do a written plan with a sketch so the Planning office had documentation of that. Tiffani pointed to item #8 in attachment 4, as gutters and downspouts were required in their 2018 permit for the house. She clarified that staff were asking how the deck would be included in that stormwater plan. They could modify their stormwater plan for the whole structure in the zoning conformance application that they needed to submit. Kipp said they had an engineer who would do this. The discussion continued.

Frank and Mary:

- Pg. 9, item F, next to last bullet:
 - Add 'future' between 'further' and 'encroachment'.
 - Delete the wording after 'Drive'.

Frank:

- Pg. 9, item G: Replace the paragraph with 'A 10-foot deck is reasonably considered to be the minimum usable size.'

Kipp requested that the Board change the first condition on pg. 10, to allow for the deck to be 10 feet from the established front wall of the structure. This would give a set permanent point to measure from. They didn't know where the edge of the county road was.

Steve and Mary:

- Pg. 10, condition 1: Replace 'be located no closer' with 'extend no more'. Replace the wording after '10 feet' with 'from the east front foundation of the structure.'

Frank, Jacob and Steve:

- Pg. 10, condition 6: Add 'for the deck and a modified plan for the house' after 'storm water plan' in the first line. Replace 'is being drained away from' with 'is not impacting' in the 2nd line.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the variance subject to the rewritten findings, conditions and terms. Motion carried, 4 in favor (Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen) (with 1 recusal).

POLAR CONDITIONAL USE—UPPER WEST SHORE (5:12 pm)

Tiffani Murphy presented the staff report. (See attachments to minutes in the Nov. 2019 meeting file for staff report.) She noted that public comment arrived after the staff report and had been handed out to the board. (See attachments to minutes in the Nov. 2019 meeting file for copy.)

Tiffani described for Mike that this conditional use came up as a violation that Planning staff noticed while in the field. She wasn't sure how long the RV had been on the property. She replied to Steve that she found the approval for slope disturbance and coverage but not an approval for 2-year RV use during construction.

Mike said he spoke to a neighbor near this property, who said there was some address confusion between the properties. The neighbor indicated the trailer had been there for at least 5 years. It wasn't on a foundation or skirted. Frank said the letter from a neighbor, Brent Zubot, said 7 years, which was as long as that neighbor had been there. Frank noted they didn't know if it had been used or just stored. Tiffani said they could be storing it there and not staying there. That

wasn't a violation. Mike reported the neighbor he spoke with had described both the applicant and the neighbor between him and her as visiting on a seasonal basis. Tiffani clarified that the hose and power connections had caught their attention.

Applicant Lisa Polar spoke on behalf of her application. She pointed to her narrative in attachment 2 of the staff report, and touched on work done with the county. She'd run into health issues and had to table things. She used it infrequently but she did use it and loved being there. Her hardship was moving things. She kept it clean and neat. The water quality was important and they'd done an AdvanTex system. She'd gone above and beyond and spent a lot of money to get to this point. She just wanted to be able to enjoy the little piece of her [50 feet] [of lakeshore].

Lisa replied to Steve that no structures were on the property at this time. The structure in the picture was her neighbor's home. The shed was on his property as well. You saw the trailer on her property and [otherwise] there was nothing on it. They'd done landscaping, and kept adding to it. Tiffani added that both her lot and the neighbor's lot were extremely narrow. It was hard to tell where one started and ended. Steve asked about Mike [Dedman's] property and she clarified that he encroached on her property to drive to his house.

Steve referred to inconsistent references to time frame. He clarified it could be used as a dwelling for 5 months, then it couldn't be used for 30 days. Tiffani, Mary and Steve observed that you had to remove it from the property for those 30 days. Steve asked how she would meet that requirement. He noted these regulations might be rewritten at some point but currently the regulations said it had to be removed from the property. The group discussed this further. Lisa noted it was really hard to get the trailer where they park it. Lisa said her original intent had been to build a house. She would have never gone through the tens of thousands of dollars of work otherwise. Steve outlined that the conditional use that she applied for was for 5 months on and 30 days off. He didn't know how she would do that. That was all the board could do right now. He thought she could apply for a variance to permanently have a temporary dwelling there; that would be a different kind of application. Tiffani explained that with a variance you had to supply a hardship that wasn't personal, financial or economical. It had to be based on the property itself. A conditional use was allowed within the regulations with mitigation for potential impacts. Lisa checked that this applied to any trailer she saw. Frank qualified if it was zoned, and Steve added if it wasn't grandfathered. Jacob supplied that the zoning regulations were written in 1994. Tiffani mentioned others who'd gotten the same letter that Lisa had. Various discussions broke out, including in the audience.

Jacob brought the group back together. The public comment that was submitted was a prime example of why this process was in place, and why it worked. Sometimes it made perfect sense to leave [a camper] there all the time but sometimes it needed to go away to alleviate the neighbors from having to look at it all the time. Mike commented it wasn't instigated by the neighbors but by the Planning Dept. The neighbor was concerned about it being permanent. Tiffani clarified an approval would be good as long as Lisa owned the property. Mike noted that she had to remove it physically for 30 days. Jacob said anyone using a camper had to do that every time they used it. They were designed for that. Frank said the problem was the terrain of the lot made this difficult.

Public comment opened:

Kipp Lewis stored his trailer on their property in the summer. If this conditional use was provided, the applicant would remove it for 30 days. Could they then move it back and store it there? His understanding was the 5 months started when it was connected or lived in again. Tiffani clarified that they could see the hook-ups from the road. Frank asked if once it was used as a temporary residence, whether you could convert back and forth from storage to temporary dwelling. Jacob said 30 days off and 5 months back, whether you were using it or not. It was a temporary dwelling. Steve said when Kipp stored his trailer, it wasn't a temporary dwelling because it was just being stored. The applicant didn't have a home on the property so this was the only dwelling on the property. It made it hard to say that it was stored. He asked Lisa again if she could handle the 30 days off. Lisa said for them, they'd probably have to remove it for more because it was only usable for a few months in the summer. The hardest part would be the move.

Public comment closed.

Steve offered a change: Pg. 5, finding 4.viii, last line: Change 'another 5-month time frame' to 'at least 30 days'.

Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the conditional use with findings of fact [as modified] and conditions as written. Motion carried, all in favor.

**MC NATT SETBACK & IMPERVIOUS SURFACE COVERAGE VARIANCES—
FINLEY POINT (5:42 pm)**

Clint Evenson presented the staff report. (See attachments to minutes in the Nov. 2019 meeting file for staff report.) He noted that public comment was received today from the northern adjacent neighbor. (See attachments to minutes in the Nov. 2019 meeting file for copy.) He advised the board to read through that, and relayed portions. Based on the comments, the board might choose to modify or add proposed conditions. He clarified for Mike that after receiving the first email, he wanted to know more about the situation so he asked for more information and also ideas for solutions that the commenter might have. He discussed some of the pictures and locations of various items with the board.

Frank asked about the Planning Dept. role in a case like this. Jacob said a lot of this was civil. It wasn't regulated by zoning. They just got this in this afternoon so they didn't have an opportunity to get a more current picture. They felt it was good to hear both sides of the story and maybe talk out some possible solutions and get a better understanding. Generally this was a civil issue. Frank said they were looking at just the setbacks. Jacob thought if they determined some of the concerns were of impact [to] the variance request, then they could try to address it.

Susan McNatt said this was a complete surprise. She'd communicated with the neighbor the whole time and got permission to cut down certain trees. They spent the money to have those removed so they were able to swing the modular home into place. The neighbors complained that their driveway was damaged and asked her to fix it so she put in \$1500 worth of gravel and had someone roll it so it was solid in there. She did the best she could to fix it. She hadn't heard of anything wrong since. She was putting 4 trees and vegetation along the line. She was told it

was best to wait for the spring because the deer liked to eat everything in the fall. She apologized that this [application] wasn't done before. Her contractor said she didn't need it. A previous owner of the property to the north asked for access to her property for a well, and they made a huge mess of the property. That neighbor talked to her about how they could fix it and did so. She talked about caring about the lake. She didn't know where this [comment] was coming from or what he was talking about. She'd only seen him at the property twice.

Frank clarified the board was looking at a variance on a setback and the location of structures. Dealing with neighbor disputes was a civil matter, not the board or the planners. Steve and Mike asked about the work done. Susan replied it went through Gregg's Homes in Kalispell and Champion Homes was the builder. It was on a raised foundation for an unfinished daylight basement. Gregg's Homes placed it on the property and the contractor did the foundation. The contractor was recommended but they'd had a lot of problems with him.

Mike referred to attachment 3 and the little triangles of setback encroachments, not property line encroachments. This was what they were talking about. Steve observed that much of this lot was so steep that it had a small buildable area. What was the vegetation like on the steep slopes down to the lake? Susan replied it was natural vegetation. Steve remarked that the impervious surface was pushed up to a high percentage because the buildable area was small, not because there was a lot of impervious surface. The result was, unlike tonight's first item, a lot of open area was there to absorb the stormwater, and lots of vegetation to treat it before it got to the lake. He didn't see the impervious surface as a problem. Based on the size and location of the setback encroachment, he suspected that whoever built the garage and the contractor who poured the foundation assumed the setback was from the foundation and not the eave. This was different in different places. Unfortunately, some contractors jumped to conclusions rather than researching a particular property. Frank commented the lot was mostly native vegetation. Susan responded to Frank that she had verbal permission from the neighbor, and possibly an email.

Mike said he visited this property today. The picture [in the email] didn't represent the way it was today. He suggested focusing on the small encroachments into the setback. He understood how sometimes contractors or vendors from outside the area might make assumptions without clear definition.

Motion made by Mike McKee, and seconded by Frank Mutch, to approve the variances and findings of fact and conditions. Motion carried, all in favor.

MINUTES - Deferred

OTHER BUSINESS (6:10 pm)

Jacob touched base with the board on sharing late public comment by email for those arriving after the staff reports were done. Lita highlighted that she would continue to provide paper copies of late comments at the meeting.

Don Patterson, chair, adjourned the meeting at 6:14 pm.